



### Invitation for Bids

Solicitation Number: 2410  
Date Issued: 3/6/2024  
Procurement Officer: Tricia Batten  
Phone: (864) 578-0128  
Email Address:  
Patricia.Batten@spart2.org

DESCRIPTION: IFB #2410 Boiler Replacement

*The Term "Offer" Means Your "Bid" or "Proposal". Your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior.*

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

<b>MAILING ADDRESS:</b> Spartanburg School District Two Attn: Tricia Batten 3231 Old Furnace Road Chesnee, SC 29323	<b>PHYSICAL ADDRESS:</b> Spartanburg School District Two Attn: Tricia Batten 3231 Old Furnace Road Chesnee, SC 29323
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SUBMIT OFFER BY: **March 28, 2024 @ 1:00 PM**

QUESTIONS MUST BE RECEIVED BY: **March 20, 2024 by 10:00 AM**  
(please direct questions to Tricia Batten at [patricia.batten@spart2.org](mailto:patricia.batten@spart2.org))

NUMBER OF COPIES TO BE SUBMITTED: 1 Original Copy

CONFERENCE TYPE: <b>Required Pre-Bid Meeting</b> DATE & TIME: <b>March 13, 2024 @ 9:00 AM</b>	LOCATION: District Maintenance Office 343 Blalock Road Boiling Springs, SC 29316
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AWARD & AMENDMENTS	The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <a href="https://www.spart2.org/departments/finance/procurement">https://www.spart2.org/departments/finance/procurement</a>
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You must submit a signed copy of this form with your offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold your offer open for a minimum of thirty (30) calendar days after the opening date.

NAME OF OFFEROR <small>(full legal name of business submitting the offer)</small>		Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.	
AUTHORIZED SIGNATURE <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>		TAXPAYER IDENTIFICATION NO. <small>(See "Taxpayer Identification Number" provision)</small>	
TITLE <small>(business title of person signing above)</small>			
PRINTED NAME <small>(printed name of person signing above)</small>	DATE SIGNED	STATE OF INCORPORATION <small>(If you are a corporation, identify the state of incorporation.)</small>	

OFFEROR'S TYPE OF ENTITY: (Check one)

Sole Proprietorship     
 Partnership     
 Other \_\_\_\_\_

Corporate entity (not tax-exempt)     
 Corporation (tax-exempt)     
 Government entity (federal, state, or local)

<b>HOME OFFICE ADDRESS</b> (Address for offeror's home office / principal place of business)	<b>NOTICE ADDRESS</b> (Address to which all procurement and contract related notices should be sent.)
	Area Code - Number - Extension                      Facsimile
	E-mail Address

<b>PAYMENT ADDRESS</b> (Address to which payments will be sent.)	<b>ORDER ADDRESS</b> (Address to which purchase orders will be sent)
____ Payment Address same as Home Office Address ____ Payment Address same as Notice Address <b>(check only one)</b>	____ Order Address same as Home Office Address ____ Order Address same as Notice Address <b>(check only one)</b>

**ACKNOWLEDGMENT OF AMENDMENTS/ADDENDA**  
 Offerors acknowledges receipt of amendments/addenda by indicating amendment number and its date of issue.

Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

<b>DISCOUNT FOR PROMPT PAYMENT</b>	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	____ Calendar Days (%)
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**MINORITY PARTICIPATION**

Are you a South Carolina Certified Minority Vendor? **Yes** \_\_\_\_\_ **No** \_\_\_\_\_

If yes, South Carolina Certification # \_\_\_\_\_

Spartanburg County School District Two will accept proposals from qualified vendors to provide Boiler Replacements.

All Offerors must submit one (1) Original copy.

You are required to mark the original copy of your offer to identify any information that is exempt from public disclosure. In addition, you must also submit one complete copy of your offer from which you have removed any information that you marked as exempt, i.e., a redacted copy. The information redacted should mirror in every detail the information marked as exempt from public disclosure. The redacted copy should (i) reflect the same pagination as the original and (ii) show the empty space from which information was redacted.

Proposals will be accepted until 1:00 PM on Thursday, March 28, 2024.

At that time, each Bid will be opened and the proposers' name read aloud along with the proposers' offered pricing.

The District assumes no responsibility for the delivery of any solicitation, addendum, solicitation response, or any other such correspondence by the US Postal Service, electronic transmission, facsimile, or any other method.

LATE BID PACKAGES WILL NOT BE ACCEPTED UNDER ANY CIRCUMSTANCES.

Sealed bids may be mailed or hand-delivered to:

Spartanburg County School District 2  
3231 Old Furnace Rd  
Chesnee, SC 29323

*"IFB#2410 Boiler Replacement"*  
Attn: Tricia Batten  
Procurement Department

All questions must be addressed to Tricia Batten ([Patricia.Batten@spart2.org](mailto:Patricia.Batten@spart2.org)). Deadline for questions is 10:00 am on March 20, 2024.

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### I. SCOPE OF SOLICITATION

Spartanburg School District Two (hereinafter, “the District”) invites all qualified providers to submit sealed proposals for the acquisition of Boiler Replacements, complying with the enclosed description and/or specifications and conditions for this solicitation.

Spartanburg County School District 2 is located in the northwestern part of Spartanburg County, and includes the Town of Chesnee and the communities of Boiling Springs, Fingerville, and Mayo. A small portion of the District is located in Cherokee County. The District encompasses a land area of approximately 134 square miles. The District is made up of 2 high schools, 3 middle schools, and 9 elementary schools. The District currently has an annual budget of over \$104 million, and over 11,000 students including pre-K, and employs approximately 1,250 employees.

**MAXIMUM CONTRACT PERIOD:** (estimated)

Initial contract has an estimated start date of April 15, 2024. The work specified within this solicitation should be completed by August 1, 2024.

### II. INSTRUCTIONS TO OFFERORS

#### A. GENERAL:

**DEFINITIONS:** Except as otherwise provided herein, the following definitions are applicable to all parts of the solicitation: **AMENDMENT** means a document issued to supplement the original solicitation document.

**BOARD** means the Spartanburg School District Two Board of Trustees

**BUYER** means the Procurement Officer.

**CHANGE ORDER** means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

**CONTRACT** See clause entitled Contract Documents & Order of Precedence.

**CONTRACT MODIFICATION** means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

**CONTRACTOR** means the Offeror receiving an award as a result of this solicitation.

**COVER PAGE** means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.

OFFER means the bid or proposal submitted in response this solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.

OFFEROR means the single legal entity submitting the offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract.

PROCUREMENT OFFICER means the person, or his successor, identified as such on the Cover Page.

RESPONSIBLE Bidder means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability, which will assure good faith performance, which may be substantiated by past performance RESPONSIVE Bidder means a person who has submitted a bid or offer, which conforms in all material aspects to the invitation for bids or request for proposals.

SOLICITATION means this document, including all its parts, attachments, and any Amendments.

SUBCONTRACTOR means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.

WORK means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract

YOU and YOUR means Offeror.

**AMENDMENTS TO SOLICITATION:** (a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following website for the issuance of Amendments (<http://spart2.org/departments/finance/procurement>) (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by letter, or (3) by submitting a bid that indicates in some way that the bidder received the amendment, (4) by submitting a bid that identifying the amendment number and date in the space provided for this purpose on page 2. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

**AUTHORIZED AGENT:** All authority regarding this procurement is vested solely with the responsible Procurement Officer.

**AWARD NOTIFICATION:** Notice regarding any award, cancelation of award or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, any notice of extension of award. Should the contract resulting from this solicitation have a total or potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the solicitation and any award will not be effective until the eleventh day after such notice is given.

**BID/PROPSOAL AS OFFEROR TO CONTRACT:** By submitting your bid or proposal, you are offering to enter into a contract with the District. Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror in this solicitation. An offer may be submitted by only one legal entity, "joint bids" are not allowed.

**BID ACCEPTANCE PERIOD:** In order to withdraw Your offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing.

**BID IN ENGLISH & DOLLARS:** Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation.

**BOARD AS PROCUREMENT AGENT:** The Procurement Officer is an employee of the Board acting on behalf of the District pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the District. The Board is not a party to such contracts, unless and to the extent that the Board is a using governmental unit, and bears no liability for any party's losses arising out of or relating in any way to the contract.

**CERTIFICATE OF INDEPENDENT PRICE DETERMINATION:** Giving false, misleading, or incomplete information on this certification may render you subject to prosecution under Section 16-9-10 of the South Carolina Code of Laws and other applicable laws

(a) By submitting an offer, the offeror certifies that –

1. The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any other offeror or competitor relating to:
    - a. Those prices;
    - b. The intention to submit an offer; or
    - c. The methods or factors used to calculate the prices offered
  2. The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in case of a negotiated solicitation) unless otherwise required by law; and
  3. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory –
1. Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or
  2.
    - i. Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal];
    - ii. As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and
    - iii. As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.
- (c) If the offeror deletes or modifies paragraph (a)(2) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

**CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS:**

- (a) By submitting an offer, offeror certifies, to the best of its knowledge and belief, that –
1. Offeror and/or any of its principals –
    - i. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;
    - ii. Have not, within a three year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offer; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasions, or receiving stolen property; and
    - iii. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)1. ii) of this provision.
  2. Offeror has not, within a three year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state or local) entity.
- (b) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager; plant manager; head of subsidiary, division, or business segment, and similar positions).
- (c) Offeror shall provide immediate written notice to the Procurement officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances
- (d) If Offeror is unable to certify the representations stated in paragraphs a)1) and 2), Offeror must submit a written explanation regarding its inability to make the certification. The certification will be

considered in connection with a review of the Offeror's responsibility. Failure for the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror non-responsible.

- (e) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings
- (f) The certification in paragraph a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the District, the Procurement Officer may terminate the contract resulting from this solicitation for default.

**CODE OF LAW AVAILABLE:** The Spartanburg School District 2 Procurement Code is available at <https://www.spart2.org/departments/finance/procurement> . The South Carolina Regulations are available at <http://www.scstatehouse.net/coderegs/statmast.htm>

**DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE:** You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in completing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principals are:

- A.) Preventing the existence of conflicting roles that might bias a contractor's judgment, and
- B.) Preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the District may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your offer identifies any services that relate to either this solicitation or the work that has already been performed by you, a proposed subcontractor, or an affiliated business of either.

**DEADLINE FOR SUBMISSION:** Any Offer received after the Procurement Officer of the District or their designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the District Office at 3231 Old Furnace Road, which services that purchasing office prior to the bid opening (R.19-445.2070(H)).

**DRUG FREE WORKPLACE CERTIFICATION:** By submitting an Offer, Offeror certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

**DUTY TO INQUIRE:** Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require a better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the District's attention.

**ETHICS CERTIFICATE:** By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention:

- a.) Section 8-13-700, regarding use of official position for financial gain;
- b.) Section 8-13-705, regarding gifts to influence action of public official;
- c.) Section 8-13-720, regarding offering money for advice or assistance of public official;
- d.) Section 8-13-755 and 8-13-760, regarding restriction on employment by former public official;
- e.) Section 8-13-755, prohibiting public official with economic interest from acting on contracts;
- f.) Section 8-13-790; regarding recovery of kickbacks;
- g.) Section 8-13-1150; regarding statements to be filed by consultants; and

- h.) Section 8-13-1342; regarding restrictions on contributions by contractor or candidate who participated in awarding of contract. The District may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement be filed.

**OMIT TAXES FROM PRICE:** Do not include any sales or use taxes in your price that the District may be required to pay.

**OPEN TRADE REPRESENTATION:** By submitting an Offer, Offeror represents the Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

**PROTESTS:** Any prospective Bidder, Offeror, Contractor, or Subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the chief business official in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, or contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the chief business official of its intent to protest, may protest to the chief business official within fifteen days of the date of award or notification of intent to award, whichever is earlier, is posted and sent in accordance with the District's Procurement Code.

**PROHIBITED COMMUNICATIONS AND DONATIONS:** Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of law.

- a.) During the period between publication of the solicitation and final award, **you must not communicate, directly or indirectly, with the District or its employees, agents or officials regarding any aspect of this procurement activity**, unless otherwise approved in writing by the Procurement Officer. All communications must be solely with the Procurement Officer.
- b.) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the District during the period beginning eighteen months prior to the Opening Date

**PUBLIC OPENING:** Offers will be publicly opened at the date/time and at the location identified on the cover page, or last Amendment, whichever is applicable.

**QUESTIONS FROM OFFERORS:**

- a.) Any prospective Offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc. must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to the opening unless an earlier date is specified on the Cover Page. Label any communication regarding your questions with the name of the Procurement Officer and the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors as an Amendment to the solicitation if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Offerors. See clause entitled "Duty to Inquire". We will not identify you in our answer to your question.
- b.) The District seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer – as soon as possible – regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition.

All Questions shall be in writing and submitted to and received no later than the date on the Cover Page of this solicitation via email to [Patricia.Batten@spart2.org](mailto:Patricia.Batten@spart2.org)



**REJECTION/CANCELATION:** The District may cancel this solicitation in whole or in part. The District may reject any or all proposals in whole or in part.

**RESPONSIVENESS/IMPROPER OFFERS:**

- a.) Bid as Specified. Offerors for supplies or services other than those specified will not be considered unless authorized by the Solicitation.
- b.) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.
- c.) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the District cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer.
- d.) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price.
- e.) Unbalanced Bidding. The District may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items and subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.
- f.) Do not submit bid samples or descriptive literature unless expressly requested. Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation.

**SIGNING YOUR OFFER:** Every Offer must be signed by an individual with actual authority to bind the Offeror.

- a.) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm.
- b.) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by the general partner.
- c.) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign.
- d.) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant.
- e.) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.

**DISTRICT OFFICE CLOSINGS:** If an emergency or unanticipated event interrupts normal governmental processes so that offers cannot be received at the District office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first workday on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule the bid opening. If the District offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference.

#### SUBMITTING CONFIDENTIAL INFORMATION:

- a.) According to Section 11-35-410, any person submitting a document in response or with regard to any solicitation or other request must “comply with instructions provided in the solicitation for making information exempt from public disclosure. Information not marked as required by the application instructions may be disclosed to the public.” IF YOU IDENTIFY YOUR ENTIRE RESPONSE AS EXEMPT FROM PUBLIC DISCLOSURE, OR IF YOU DO NOT SUBMIT A REDACTED COPY AS REQUIRED, THE DISTRICT MAY, IN ITS SOLE DISCRETION, DETERMINE YOUR BID OR PROPOSAL NONRESPONSIVE AND INELIGIBLE FOR AWARD.
- b.) By submitting a response to this solicitation or request, Offeror agrees to the public disclosure of every page, or portion thereof, of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page, or portion thereof, was redacted and conspicuously marked “Trade Secret” or “Confidential” or “Protected”, (2) agrees that any information not redacted and marked, as required by these bidding instructions, as a “Trade Secret” is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure
- c.) If your offer includes any information that you claim is exempt from public disclosure, you must submit one complete copy of your offer from which you have removed or concealed such information (the redacted copy). Except for the information removed or concealed, the redacted copy must be identical to your original offer.
- d.) Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret or protected. The redacted copy must reflect the same pagination as the original and show the empty space from which information was redacted. The Procurement Officer must be able to view, search, copy and print the redacted copy without a password. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the District may, in its sole discretion, determine it nonresponsive.
- e.) On the redacted copy, you must identify the basis of your claim by marking each redaction as follows: You must separately mark with the “CONFIDENTIAL” every page, or portion thereof, that you redacted and claim as exempt from public disclosure because it is either (1) a trade secret as defined in Section 30-4-40(a)(2) of the Freedom of Information Act, or (2) privileged and confidential, as that phrase is used in Section 11-35-410. You must separately mark with the word “PROTECTED” every page, or portion thereof, that you redacted and claim as exempt from public disclosure pursuant to Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text.
- f.) In determining whether to release documents, the District will detrimentally rely on your redaction and marking of documents, as required by these bidding instructions, as being either “Confidential” or “Trade Secret” or “Protected”. By submitting a response, you agree to defend, indemnify and hold harmless the District, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney’s fees, arising out of or resulting from withholding information by the District or any of its agencies, that you have redacted or marked as “Confidential” or “Trade Secret” or “Protected”. (All references to SC Code of Laws.)

#### SUBMITTING A PAPER OFFER OR MODIFICATION:

- a.) All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule).
- b.) (1) All copies of the offer or modification, and any other documents required to be submitted with the offer shall be enclosed in a sealed, opaque envelope or package. (2) Submit your offer or modification to the address on the Cover Page. (3) The envelope or package must show the time and date specified for opening, the solicitation number, and the name and address of the bidder. If the

offer or modification is sent by mail or special delivery service (UPS, Federal Express, etc.), the outermost envelope or wrapper must be labeled "OFFER ENCLOSED" on the face thereof.

- c.) If you are responding to more than one solicitation, submit each offer in a separate envelope or package.
- d.) Submit the number of copies indicated on the Cover Page.
- e.) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation.

**WITHDRAWAL OR CORRECTION OF OFFER:** Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting the withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S C Code Section 11-35-1520 and Regulation 19-445.2085.

## **B. SPECIAL INSTRUCTIONS:**

**BACKGROUND CHECKS:** As a minimum, the Contractor shall obtain a complete South Carolina statewide criminal background investigation for all individuals and employees performing work or services for Contractor or any other entities such as subcontractors, sub-sub-contractors, and consultants who will perform work or a service on this project. In the event that the individual being investigated is from out of state, the criminal background investigation shall be broadened to include their home state, as well as the state of South Carolina, as outlines above. The company providing such information must be recognized by the local law enforcement agency as qualified to do so. In addition, the Contractor shall check employees against the National Database of Registered Sex Offenders. Any individual that is registered as a sex offender will not be permitted on school property.

All costs associated with these criminal background checks are the responsibility of the contractor.

The Contractor shall be responsible and liable for the conduct and actions of their employees and all individuals working under them.

Any individual with the following convictions or pending charges will not be permitted on any school project or property:

1. Rape or Criminal Sexual Conduct
2. Child Molestation or Abuse
3. Any Sexually Oriented Crime
4. Drugs: Felony use, possession or distribution
5. Violent crimes
6. Robbery
7. Felony

Any individual with a prior conviction or pending charges contained in the aforementioned list will not be permitted on the Project Site or the District's property.

The District may, at any time, request verification of criminal background investigation for any employee or subcontractor on school property.

**CONFERENCE – PRE-BID/PROPOSAL – MANDATORY:** See Conference Pre-Bid/Proposal clause. Your failure to attend the conference shall result in rejection of your offer. Attendance will be evidenced by your representative's signature on the attendance roster.

### **CONFERENCE – PRE-BID/PROPOSAL:**

Pre-Bid/Proposal Conference Date and Time: March 13, 2024 @ 9:00 AM

Location of Pre-Bid/Proposal Conference: District Maintenance Office  
343 Blalock Rd  
Boiling Springs, SC 29316

Due to the importance of all offerors having a clear understanding of the specifications and requirements of this solicitation, a conference of potential offerors will be held on the date specified on the cover page. Bring a copy of the solicitation with you. Any changes resulting from this conference will be noted in a written

amendment to the solicitation. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the District. The District assumes no responsibility for any conclusions or interpretations made by the Contractor base on the information made available at the conference. Nor does the District assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this conference.

**CLARIFICATION:** The District reserves the right, at any time after opening and prior to award, to request from any Bidder clarification, address technical questions, or to seek or provide other information regarding the Bidder's proposal. Such a process may be used for such purposes as providing an opportunity for the Bidder to clarify his bid/proposal in order to assure mutual understanding and/or aid in determinations of responsiveness or responsibility. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation.

**DESCRIPTIVE LITERATURE – LABELING:** Include offer's name on the cover of any specifications or descriptive literature submitted with your offer.

**DESCRIPTIVE LITERATURE – REQUIRED:** Your offer must include manufacturer's latest literature showing complete product specifications.

**PROTEST – ADDRESS:** Any protest must be submitted in writing to the Chief Finance Officer, Brandi Gist, 3231 Old Furnace Rd, Chesnee, SC 29323 or to [brandi.gist@spart2.org](mailto:brandi.gist@spart2.org)

**UNIT PRICES REQUIRED:** Unit price to be shown for each item.

### **III. SCOPE OF WORK**

It is the intent of Spartanburg School District 2 (hereinafter referred to as the "District") to solicit bids for Boiler Replacements at two (2) schools – Boiling Springs Middle School and Oakland Elementary School.

This solicitation does not commit Spartanburg School District 2 to award a contract, to pay any costs incurred in preparation of a bid, or to procure any services that may be offered.

**Mandatory Pre-Bid Conference:** Due to the importance of all offerors having a clear understanding of the specifications and requirements of this solicitation, a conference of potential offerors will be held on March 13. Bring a copy of the solicitation with you. Any changes resulting from this conference will be noted in a written amendment to the solicitation. Failure to attend the conference shall result in rejection of the offer. Attendance will be evidenced by the vendor representative's signature on the attendance roster. The District believes all information presented in this solicitation is to be true and accurate; however, site visits are recommended for this project. It is the Bidder's responsibility to ensure that they familiarize themselves with all equipment and any conditions which may affect their response, performance, and bid prices. Submission of a bid will be prima facie evidence that the Bidder did in fact make a site inspection and is aware of all conditions affecting their response, subsequent performance, and price.

#### **General Specifications:**

1. Include Neutralization kit for drain for each boiler
2. Gas regulators
3. Bell & Gossett, Ecocirc, or Grundfos Circulating pumps
4. Demo old boilers and piping for new connections
5. New piping is required to be 40 black steel with welded or groove fittings
6. Gas piping to be schedule 40 black steel welded or threaded pipe
7. Insulation to be 1-1/2 inch fiberglass with ASJ covering and PVC vinyl coverings for all fittings.
8. All electrical and control hook ups included
9. All exhaust venting and any roof penetration to be included, utilize existing where possible. Include licensed roofer repair/patch
10. Remove and dispose of old boilers

11. Hook up gas, water, and electrical as required
12. Utilize existing control wiring, if possible, any new control wiring to be provided by owner
13. No asbestos allowed
14. Ensure emergency stop function if existing. If boiler e-stop does not exist, installation is required.
15. These are turnkey jobs with mfg support startup.
16. All jobs should be completed by August 1, 2024.

Job Summary by School:

- Boiling Springs Middle School – Remove 2 Weil McLain boiler and install 2 Patterson Kelley condensing natural gas boilers – 1,000,000 BTU per hour input
  - Two (2) Sonic SC1000, stainless steel, condensing boiler with the following construction features/accessories:
    - Operate up to certified 97% thermal efficiency
    - Stainless Steel Heat Exchanger
    - Full modulation burner controls
    - NURO® Touch-Screen Control System with Bacnet
    - Relief Valve Kits, 80 psi
    - Low water cut off
    - Remote header sensor
    - Condensate Neutralization kit for each boiler
    - Factory start up
    - Two (2) inline circulating pumps, voltage to be verified, 2” connections
    - Each sized for 75 gpm at 40’ with 1.5 hp motor
    - Two (2) triple duty valve
- Oakland Elementary School – Remove 2 Peerless boilers and replace with 2 Patterson Kelley condensing natural gas boilers – 2,000,000 BTU per hour input
  - Two (2) STORM ST2000, stainless steel, condensing boilers with the following construction features/accessories:
    - Operate up to certified 97% thermal efficiency
    - Stainless Steel Heat Exchanger
    - Full modulation burner controls
    - NURO® Touch-Screen Control System with Bacnet
    - Relief Valve Kits, 80 psi
    - Low water cut off
    - Remote header sensor
    - Condensate Neutralization kit for each boiler
    - Factory start up
    - Two (2) inline circulating pumps, voltage TBD, 2.5” connections
    - Sized for 130 gpm at 40’ with 3 hp motor
    - Two (2) triple duty valves

#### IV. INFORMATION FOR OFFEROR TO SUBMIT

Submit one (1) original copy of the proposal.. In order for proposals to be evaluated, the Offeror must submit as a minimum the following information:

1. Completed and Signed Cover Page & Page 2
2. All other information and documents requested in this part and parts:
  - a. II. Special Instructions
  - b. III. Scope of Work

- c. V. Qualifications
  - d. VIII. Bidding Schedule/Price Proposal
3. Any appropriate attachments addressed in Part IX

**Attachments to Solicitations:**

You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein, if any, including policy types; coverage types; limits, sub-limits, and deductibles for each policy and coverage type; the carrier's AM Best rating; and whether the policy is written on an occurrence or claims-made basis.

**Evaluation:**

This proposal will be evaluated and awarded based on "Total Price" listed on the Bidding Schedule.

*The Proposal response must contain a statement to the effect that your Proposal is firm for a period of ninety (90) days from the Proposal due date or longer if so required by the District.*

**V. QUALIFICATIONS**

MINIMUM QUALIFICATIONS

1. Provide information on company background; include size of firm, number of full time employees, number of years in business, and qualifications/location of key personnel that will be involved in providing the service. Provide the location from which the work is to be performed.
  - a. Offeror must have an office in South Carolina.
  - b. Offeror must have been in business for a minimum of 10 years and have been providing these types of products and services for that period.
  - c. Offeror must have experience with K-12 educational clients (minimum of 5 percent K-12 educational clients and at least ten years continuous experience in K-12 education accounts).
2. Certify that your organization and any principal of the organization is not prohibited, suspended, or otherwise declared ineligible to contract or provide any services required by any federal, state or local public agency.
3. Disclose financial conditions (i.e. bankruptcy, pending litigation, planned closures, impending mergers, etc.) that may effect your firm's ability to perform contractually.
4. Offeror must, upon request, furnish satisfactory evidence of its ability to furnish products or services in accordance with the terms and conditions of this solicitation. The District reserves the right to make the final determination as to the Offerors ability to provide the services requested herein.

MINIMUM REQUIREMENTS

1. Describe how your organization is properly licensed, bonded, and/or insured. Coverage documentation must be submitted upon request.
2. Proposer must provide evidence, satisfactory to the District, of the following insurance requirements:
  - a. District requires Proposer to have and maintain the following insurance coverage and indemnification provisions.
  - b. Proposer agrees to provide and maintain insurance coverage until the contract is completed and to furnish certificates from its insurance carriers showing that it carries insurance in the following minimum limits:
    - General Liability: \$1,000,000 per occurrence/\$2,000,000 aggregate
    - Automobile Liability: \$1,000,000 including non-owned auto liability

-Worker's Compensation: Statutory Limits

-Errors and Omissions: \$20,000,000

3. Provide a detailed, narrative statement listing the five (5) most recent, comparable K-12 contracts and/or similar size within the last 3 years. Include the name of the organization(s), contact person, phone number, and email address. For each contract, describe how the services provided are similar to those requested by this solicitation, and how they differ.
4. List a minimum of five (5) references with contact information for SC 5-12 school districts.

#### SUBCONTRACTOR IDENTIFICATION

If you intend to subcontract, at any tier or level, with another business for any portion of the work and that portion either (1) exceeds 10% of your coast, (2) involves access to any "District information" as defined in the clause entitled "Information Security – Definitions", if included, or (3) otherwise involves services critical to your performance of the work (err on the side of inclusion), your offer must identify that business and the work which they are to perform. Identify potential subcontractors by providing the business name, address, phone, taxpayer identification number, and point of contact. In determining your responsibility, the District may contact and evaluate your proposed subcontractors.

### **VI. AWARD CRITERIA**

All proposals will be reviewed for purposes of determining responsiveness and responsibility. Any proposal, which does not meet the essential requirements of the District, will be subject to disqualification. For purposes of determining responsibility, all information given by the Offeror concerning its ability to perform fully the contract requirements and the integrity and reliability of the Offeror will be reviewed. The submission of a proposal for review does not necessarily qualify the Offeror or proposal as being responsive or responsible. Failure to provide specific information, as requested, for use in our evaluation will cause your proposal to be disregarded.

The District reserves the right to accept or reject, in part or in entirety, any or all proposals, to negotiate with all qualified Offerors and to cancel in part or in entirety this solicitation if it is in the best interest of the District. Further, the District reserves the right to waive any or all informalities or technicalities in order to serve the best interest of the District.

An award resulting from this solicitation is for the completion of the jobs specified in this solicitation with an estimated start date of April 15, 2024 and completion by August 1, 2024.

Award will be based on the "Total Price" as listed on the Bidding Schedule to the lowest responsible and responsive bidder.

Award will be made to one Offeror.

An award announcement will be sent to all Offerors and will be posted on the district website:

<https://www.spart2.org/departments/finance/procurement>

### **VII. TERMS AND CONDITIONS**

#### **A. GENERAL**

##### 1. ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE

a. Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible procurement officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g. bankruptcy, corporate reorganizations, and consolidations, but not including partial asset sales). Notwithstanding the foregoing, Contractor may assign monies receivable under the contract provided that the

state shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible procurement officer with:

- i. proof of assignment
  - ii. the identity (by contract number) of the specific state contract to which the assignment applies, and
  - iii. the name of the assignee and the exact address or account information to which assigned payments should be made.
- b. If contractor amends, modifies, or otherwise changes its name, its identity (including the trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the procurement officer prompt written notice of such change.
- c. Any name change, transfer, assignment, or novation is subject to the conditions and approval requirement by Regulation 19-445.2180, which does not restrict transfers by operation of law.

## 2. BANKRUPTCY

- a. Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the District. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all District contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.
- b. Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

3. CHOICE OF LAW: The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

## 4. CONTRACT DOCUMENT AND ORDER OF PRECEDENCE:

- a. Any contract resulting from this solicitation shall consist of the following documents:
1. Record of Negotiations, if any, executed by you and the Procurement Officer
  2. The solicitation, as amended
  3. Documentation of clarifications [11-35-1520(8)] or discussions [11-35-1530(6)] of an offer, if applicable
  4. your offer
  5. any statement reflecting the District's final acceptance (a/k/a "award"), and
  6. Purchase orders.

These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

- b. The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation,
- i. a purchase order or other instrument submitted by the District, or
  - ii. any invoice or other document submitted by Contractor, or
  - iii. any privacy policy, terms of use, or end user agreement.

Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect

c. No contract, license, or other agreement containing contractual terms and conditions will be signed by the District. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.



5. DISCOUNT FOR PROMPT PAYMENT:

a. Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discounts will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment of individual invoices.

b. In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives the proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

6. DISPUTES:

a. Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, a federal court located in Spartanburg County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the government's sovereign immunity or the government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

b. Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

7. EQUAL OPPORTUNITY: Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference.

8. FALSE CLAIMS: According to S. C. Code of Laws Section 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

9. FIXED PRICING REQUIRED: Any price provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award.

10. NO INDEMNITY OR DEFENSE: Any term or condition is void to the extent it requires the District to indemnify, defend, or pay attorney's fees to anyone for any reason.

11. NOTICE:

a. After award, any notices shall be in writing and shall be deemed duly given:

i. upon actual delivery, if delivery is by hand

ii. upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or

iii. upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used.

b. Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the District shall be to the Procurement Officer's address on the Cover Page.

Either party may designate a different address for notice by giving notice in accordance with this paragraph.

## **12. PAYMENTS & INTEREST:**

a. The District shall pay the Contractor, after the submission of proper invoices or vouchers, the price is stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the District.

b. Unless otherwise provided herein, including the purchase order, payment will be made by check mailed to the payment address on Page Two.

c. Notwithstanding any other provision, payment shall be made in accordance with S. C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the District shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason.

d. Amounts due to the District shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30.

e. Any other basis of interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S. C. Code Ann. Section 34-31-20, are both expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published each year, applied a simple interest without compounding.

f. The District shall have all of its common law, equitable and statutory rights set-off.

**13. PUBLICITY:** Contractor shall not publish any comments or quotes by District employees, or include the District in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.

**14. PURCHASE ORDERS:** Contractor shall not perform any work prior to the receipt of a purchase order from the District. The District shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g. quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. Any order placed pursuant to the purchasing card provision qualifies as a purchase order.

**15. SURVIVAL OF OBLIGATIONS:** The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this Contract shall survive such termination, cancellation, rejection, or expiration, including but not limited to, the rights and obligations created by the following clauses: Indemnification – Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit.

**16. TAXES:** Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the District, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the District. It shall be solely the District's obligation, after payment to the contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. In the event that

the contractor fails to pay, or delays in paying to any taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the District to contractor, contractor shall be liable to the District for any loss (such as assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor.

17. TERMINATION DUE TO UNAVAILABILITY OF FUNDS: Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

18. THIRD PARTY BENEFICIARY: This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise.

19. WAIVER: The District does not waive an prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the District's rights under this contract. Any waiver must be in writing.

## **B. SPECIAL**

### **1. BANKRUPTCY – GOVERNMENT INFORMATION:**

a. All government information (as defined in the cause herein entitled "Information Security – Definitions") shall belong exclusively to the District and Contractor has no legal or equitable interest in or claim to such information. Contractor acknowledges and agrees that in the event Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, District information in its possession and/or under its control will be considered property of its bankruptcy estate.

b. Contractor agrees to notify the District within forty-eight (48) hours of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to the District, before such filing, all government information that is in Contractor's possession in a format that can be readily utilized by the District.

c. In order to protect the integrity and availability of district information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access District information.

### **2. CHANGES:**

a. Contract Modification: by written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

- i. drawings, designs, or specifications, if the supplies to be furnished are to be specifically manufactured for the District in accordance therewith;
- ii. method of shipment or packing;
- iii. place of delivery;
- iv. description of services to be performed;
- v. time of performance (i.e. hours of the day, days of the week, etc.); or,
- vi. place of performance of services.

Subparagraphs (i.) to (iii.) apply only if supplies are furnished under this contract.

Subparagraphs (iv) to (v) apply only if services are performed under this contract.

b. Adjustment of Price or Time for Performance: If any such change increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the Contract as changed, provided that the District promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

c. Time Period for Claim: Within 30 days after receipt of a written contract modification under Paragraph (a.) of this clause, unless such period is extended by the Procurement Officer in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless the District is prejudiced by the delay in notification.

d. Claim Barred After Final Payment: No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

**3. COMPLIANCE WITH LAWS:** During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

**4. CONTRACT LIMITATIONS:** No sale may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment.

**5. CONTRACTOR'S LIABILITY INSURANCE – GENERAL:**

a. Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors.

b. Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office (ISO) Form Number CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in this policy.

2. Auto Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

3. Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

c. The District, and the officers, officials, employees, and volunteers of any of them, must be covered as additional insured on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form Number CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

d. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects to the District, and the officers, officials, employees and volunteers of any of

them. Any insurance or self-insurance maintained by the District, or the officers, officials, employees, and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

e. Prior to commencement of the work, the Contractor shall furnish the District with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section at any time.

f. Should any of the above-described policies be canceled before the expiration date thereof; notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the District immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.

g. Contractor hereby grants to the District a waiver of any right to subrogation which any insurer of said Contractor may acquire against the District by virtue of payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

h. Any deductibles or self-insured retentions must be declared to and approved by the District. The District may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses an related investigations, claim administration, and defense expenses with the retention.

i. The District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**6. CONTRACTOR PERSONNEL:** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**7. CONTRACTOR'S OBLIGATION – GENERAL:** The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.

**8. DEFAULT:**

a.

i.) The District may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:

1. Deliver the supplies or to perform the services within the time specified in this contract or any extension;
2. Make progress, so as to endanger performance of this contract (but see paragraph (a)(ii.) of this clause; or
3. perform any of the other material provisions of this contract (but see paragraph (a)(ii) of this clause).

ii.) The District's right to terminate this contract under subdivisions (a)(i)(2) and (i)(3) of this clause, may be exercised if the contractor does not cure such failure within 19 days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement officer specifying the failure.

b. If the District terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the contractor will be liable to the District for any excess costs for those supplies or services. However, the contractor shall continue the work not terminated.

c. Expect for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the District in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the contractor.

d. If the failure to perform is cause by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.

e. If this contract is terminated for default, the District may require the contractor to transfer title and deliver to the District, as directed by the Procurement Officer, any:

1. completed supplies, and
2. partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as “manufacturing materials” in this clause) that the contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the contractor shall also protect the preserve property in its possession in which the District has an interest.

f. The District shall pay contract price for completed supplies delivered and accepted. The contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the contractor’s rights under the Disputes clause. Failure to agree will be a dispute under the Dispute clause. The District may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the District against loss because of outstanding liens or claims of former lien holders.

g. If, after termination, it is determined that the contractor was not in default or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the District, be the same as if the termination had been issued for the convenience of the District. If, in the foregoing circumstances, the contract does not contain a clause providing for termination for convenience of the District, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor’s rights under the Disputes clause.

h. The rights and remedies of the District in this clause are in addition to an other rights and remedies provided by law or under this contract.

**9. DISPOSAL OF PACKAGING:** Contractor shall dispose of all wrappings, crating, and other disposable materials pertaining to his contract at the end of each working day and upon completion of the job.

**10. ESTIMATED QUANTITY – UNKNOWN:** The total quantity of purchases of any individual item on the contract is not known. The District does not guarantee that the District will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information.

**11. ILLEGAL IMMIGRATION:** (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide the District upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are working in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, “A person who knowingly makes or file any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and upon conviction, must be fined within the discretion of the course or imprisoned for not more than five years, or both.” You agree to include in any contracts with your subcontractors language requiring your

subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14 and (b) include their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

**12. INDEMNIFICATION – THIRD PARTY CLAIMS – GENERAL:** notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not cause in part by and Indemnitee, and whether or not such claims are made by a third party of an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefits acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancellation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, or without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the District, its instrumentalities, agencies, departments, boards, political subdivisions and all other respective officers, agents and employees.

**13. INDEMNIFICATION – THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION:**

a. Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter "action") of any character (and all related damages, settlement payments, attorneys fees, costs, expenses, losses or liabilities) by a third party which arises out of or in connection with a disclosure of government information (as defined in the clause titled Information Security – Definitions) cause in whole or in part by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only if the act or omission constituted a failure to perform some obligation imposed by the contract or the law.

b. Indemnitee must notify contractor in writing within a reasonable period of time after Indemnitee first receives written notice of any action. Indemnitee's failure to provide or delay in providing such notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractor's ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitee's attorney/client, work product, or other privilege and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capable prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent:

i. includes an unconditional release of Indemnitee from all liability related to such commenced or threatened action, and

ii. is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect and Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction.

c. Notwithstanding any other provision, contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.

d. "Indemnitee" means the Beaufort County School District, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

#### 14. INDEMNIFICATION – INTELLECTUAL PROPERTY:

a. Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the District, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. The District shall allow contractor to defend such claim so long as the defense is diligently and capably prosecuted. The District shall allow Contractor to settle such claim so long as

1. all settlement payments are made by contractor, and
2. the settlement imposes no non-monetary obligation upon the District. The District shall reasonably cooperate with Contractor's defense of such claim.

b. In the event an injunction or order shall be obtained against the District's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either:

1. procure for the District the right to continue use, or have used, the acquired item
2. replace or modify the acquired item so that it become non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by the District.

If neither (1) nor (2), above, is practical, the District may require that Contractor remove the acquired item from the District, refund to the District any charges paid by the District therefor, and take all steps necessary to have the District released from further liability.

c. Contractors' obligations under this paragraph do not apply to a claim to the extent

1. that the claim is caused by Contractor's compliance with specifications furnished by the District unless Contractor knew its compliance with the District's specifications would infringe an IP right, or
2. that the claim is cause by Contractor's compliance with specifications furnished by the District if the District knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor.

d. as used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work.

e. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

#### 15. INFORMATION SECURITY – DEFINITIONS: The following definitions are used in those clauses that cross reference this clause.

**COMPROMISE:** means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. Without limitation, the term "compromise" includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation imposed by this contract.



**DATA:** means a subset of information in an electronic format that allows it to be retrieved or transmitted.

**DISTRICT INFORMATION:** means information (i) provided to Contractor by, or generated by Contractor for, the District or (ii) acquired or accessed by contractor as a result of performing the Work. Without limiting the foregoing, District information includes any information that Contractor acquires or accesses by software or web-based services, which includes, without limitation, any metadata or location data. District information excludes unrestricted information.

**INFORMATION:** means an communication or representation of knowledge such as facts, statistics, or opinions, in any medium or form , including textual, numerical, graphic, cartographic, narrative, or audiovisual.

**INFORMATION SYSTEM:** means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

**PUBLIC INFORMATION:** means any specific information, regardless of form or format, that the District has actively and intentionally disclosed, disseminated, or made available to the public. Information is not public information solely because it may be subject to inspection pursuant to an unfulfilled public records request.

**SOFTWARE:** means any computer program accessed or used by the District or a third party pursuant to or as a result of this contract.

**THIRD PARTY:** means any person or entity other than the District, the Contractor, or any subcontractors at any tier.

**UNRESTRICTED INFORMATION:** means:

1. Public information acquired other than through performance of the work
2. Information acquired by Contractor prior to contract information
3. Information incidental to your contract administration, such as financial, administrative, cost or pricing, or management information, and
4. Any ideas, concepts, know-how, methodologies, processes, technologies, techniques which Contractor develops or learns in connection with Contractor's performance of the work.

**WEB-BASED SERVICE:** means a service accessed over the Internet and acquired, accessed, or used by the District or a third party pursuant to or as a result of this contract, including without limitation, cloud services, software-as-a-service, and hosted computer services.

**16. LICENSES AND PERMITS:** During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and/or inspections required by the District, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

**17. MATERIAL AND WORKMANSHIP:** Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended.

**18. OWNERSHIP OF DATA & MATERIALS:** All data, material and documentation prepared for the District pursuant to this contract shall belong exclusively to the District.

**19. PRICE ADJUSTMENTS:**

a. Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):

- i.) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- ii.) by unit prices specified in the Contract or subsequently agreed upon
- iii.) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;

iv.) in such other manner as the parties may mutually agree; or,  
v.) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of S.C. Code of Laws.

b. Submission of Price or Cost Data: Upon request of the Procurement Officer, the Contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830.

**20. PURCHASING CARD:** Contractor agrees to accept payment by the District Purchasing Card for no extra charge. The Purchasing Card is issued by Visa. The purchasing card allows the District to make authorized purchases from a vendor without the requirement to issue a purchase order.

**21. RELATIONSHIP OF THE PARTIES:** Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

**22. RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES:**

a. Citizens, as well as public employees (acting in their individual capacity), should not be unnecessarily required to agree to or provide consent to policies or contractual terms in order to access services acquired by the District pursuant to this contract (hereinafter “applicable services”) or, in the case of public employees, to perform their job duties; accordingly, in performing the work, contractor shall not require or invite any citizen or public employee to agree to or provide consent to any end user contract, privacy policy, or other terms of use (hereinafter “terms of use”) not previously approved in writing by the Procurement Officer. Contractor agrees that any terms of use regarding applicable services are void and of no effect.

b. Unless expressly provided in the solicitation, public contracts are not intended to provide contractors an opportunity to market additional products and services; accordingly, in performing the work, contractor shall not – for itself or on behalf of any third party – offer citizens or public employees (other than the Procurement Officer) any additional products or services not required by the contract.

c. Any reference to contractor in items (a) or (b) also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that contractor authorizes to take any action related to the work.

d. Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay the District liquidated damages of \$1,000 for each contact with a citizen or end user that violates this restriction.

**23. TERM OF CONTRACT – EFFECTIVE DATE/INITIAL CONTRACT PERIOD:** The anticipated effective date of this contract will be May 1, 2024.

**24. TERM OF CONTRACT – TERMINATION BY CONTRACTOR:** Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer with notice of its election to terminate under this clause at least ninety (90) days prior to the effective date of termination.

**25. TERMINATION FOR CONVENIENCE:**

a. Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the District. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

b. Contractor’s Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor’s right, title, and interest under terminated

orders or subcontracts to the District. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

c. Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the District in the manner and to the extent directed by the Procurement Officer:

1. any completed supplies; and
2. such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract right (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the District has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this section in no way implies that the District has breached the contract by exercise of the Termination for Convenience Clause.

d. Compensation.

1. The Contractor shall submit a termination claim specifying the amounts due because of termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with subparagraph (c) of this paragraph.
2. The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the District, the proceeds of any sales of supplies and manufacturing materials under paragraph (3) of this clause and the contract price of the work not terminated;
3. Absent complete agreement under subparagraph (b) of the paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under subparagraph (b) shall not duplicate payments under this subparagraph:
  - i.) contract prices for supplies or services accepted under the contract;
  - ii.) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;
  - iii.) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph (2) of this clause. These costs must not include costs paid in accordance with subparagraph (3)(iii) of this paragraph;
  - iv.) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph (b) of this paragraph, and the contract price of work not terminated.
4. Contractor must demonstrate any costs claimed, agreed to, or established under subparagraphs (b) and (c) of this paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.

e. Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not:

- i. affect the District's right to require the termination of a subcontract, or
- ii. increase the obligation of the District beyond what it would have been if the subcontract had contained an appropriate clause.



VIII: Bidding Schedule  
RFP#2410  
Boiler Replacements

RFP#2410 and Number(s) \_\_\_\_ of \_\_\_\_ Addendum/Addenda received. Proposal will be invalid without completion of this acknowledgement along with Amendments Section (pg. 2) or returned signed Addendum/Addenda/Amendments and the below pricing.

Location	Cost of Labor	Cost of Material	Total Cost of Job
Boiling Springs Middle School			
Oakland Elementary School			
<b>TOTAL</b>			

Company Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_  
(same as page 1)

Printed Name from Above: \_\_\_\_\_

Date: \_\_\_\_\_

**IX: ATTACHMENTS TO SOLICITATION:**

All Attachments are a requirement for this solicitation.

- A. Reference Sheet
- B. Bidder Information Sheet
- C. Spartanburg School District 2 Vendor Form

**List References Required Under This Solicitation:**

School/Company Name #1 \_\_\_\_\_  
Representative Name \_\_\_\_\_  
City & State \_\_\_\_\_  
Phone \_\_\_\_\_  
E-mail \_\_\_\_\_  
Project \_\_\_\_\_

School/Company Name #2 \_\_\_\_\_  
Representative Name \_\_\_\_\_  
City & State \_\_\_\_\_  
Phone \_\_\_\_\_  
E-mail \_\_\_\_\_  
Project \_\_\_\_\_

School/Company Name #3 \_\_\_\_\_  
Representative Name \_\_\_\_\_  
City & State \_\_\_\_\_  
Phone \_\_\_\_\_  
E-mail \_\_\_\_\_  
Project \_\_\_\_\_

School/Company Name #4 \_\_\_\_\_  
Representative Name \_\_\_\_\_  
City & State \_\_\_\_\_  
Phone \_\_\_\_\_  
E-mail \_\_\_\_\_  
Project \_\_\_\_\_

School/Company Name #5 \_\_\_\_\_  
Representative Name \_\_\_\_\_  
City & State \_\_\_\_\_  
Phone \_\_\_\_\_  
E-mail \_\_\_\_\_  
Project \_\_\_\_\_

**BIDDER INFORMATION**

I, the undersigned, certify that this bid does not violate any Federal or State antitrust laws.

Bidder's Federal ID or Social Security Number: \_\_\_\_\_

Please attach copy of W-9 form.

All bidders who are authorized to collect South Carolina sales tax must state their South Carolina tax registration number.

South Carolina Tax Registration Number: \_\_\_\_\_

Is your company a minority-owned company? Yes\_\_\_No\_\_\_ OSMBA Cert #\_\_\_\_\_

Bidder Name:\_\_\_\_\_

Address:\_\_\_\_\_

Phone Number:\_\_\_\_\_ Fax Number:\_\_\_\_\_

Email:\_\_\_\_\_

In compliance with the invitation and subject to all conditions thereof the undersigned offers and agrees, if this bid is accepted within 60 days from the date of opening, to furnish any or all items quoted on at prices as set forth after the item and make delivery, immediately after receipt of order, delivered, all transportation costs included and prepaid and unless otherwise stated and accepted herein.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same services, materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid for the bidder.

Authorized Signature:\_\_\_\_\_ Date:\_\_\_\_\_

Name:\_\_\_\_\_ Title:\_\_\_\_\_

(Printed or Typed)



NEW VENDOR FORM



Vendor/Company/Entity Legal Name (Must match TIN below) \_\_\_\_\_

Taxpayer Identification Number (TIN): \_\_\_\_\_ or \_\_\_\_\_  
Federal Employer I.D. Number Social Security Number

Business Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Street \_\_\_\_\_ Zip Code \_\_\_\_\_ PO Box \_\_\_\_\_

Contact Person \_\_\_\_\_ Title \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

Federal Tax Classifications (Please select one)

- Individual/Sole-Proprietor/Single Member LLC
- Corporation – C or S: \_\_\_\_\_
- Partnership
- Limited liability company (C, S, or P): \_\_\_\_\_
- Non-Profit

Indicate number of years firm has been in business under the present name: \_\_\_\_\_

Principal Activity (Please select one)  Labor  Material  Other: \_\_\_\_\_

List the principal type of service(s) or product(s) that are being provided: \_\_\_\_\_

The company is applying for certified status as a:

- Minority Owned Business (MBE)
- Woman Owned Business (WBE)

Minority Status of Owner(s)

- African American
- Asian
- Aleut
- Caucasian Female
- East Indian
- Inuit
- Native American
- Other: \_\_\_\_\_

Citizenship Status of Minority Owner(s):  United States  Other: \_\_\_\_\_

Certified 8(a) by US Small Business Administration  Yes  No

Certified by the SC Department of Transportation  Yes  No

Are you licensed to do business in South Carolina, as well as locally, including all business licenses?  
 Yes  No

I certify that all information provided as part of this certification is true and accurate.

Signature \_\_\_\_\_ Printed Name \_\_\_\_\_